

BANNER OIL & GAS, LTD.

IBLA 81-582

Decided March 26, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring execution of stipulation prior to issuance of oil and gas lease. U-44385.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Stipulations

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

APPEARANCES: Hugh C. Garner, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Banner Oil and Gas, Ltd., appeals from the March 17, 1981, decision of the Utah State Office, Bureau of Land Management (BLM), requiring the execution of a wilderness protection stipulation prior to the issuance of oil and gas lease U-44385. 1/ Portions of the lands in the over-the-counter lease

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1/ Appellant's contention on appeal that appellant's offer was filed pursuant to a simultaneous drawing advertisement is wrong. The original lease application, U-44385, filed over-the-counter on Nov. 8, 1979, included the following lands in T. 2 N., R. 25 E., Salt Lake meridian, Daggett County, Utah. Sec. 21, NE 1/4, W 1/2 NW 1/4, SW 1/4, NE 1/4 SE 1/4, SW 1/4 SE 1/4; sec. 22, all; sec. 23, W 1/2, W 1/2 SE 1/4, Lots 3, 4, W 1/2 NE 1/4. However, on Mar. 10, 1980, appellant filed a partial withdrawal, leaving only the following lands in the lease application: Sec. 22, S 1/2; Sec. 23, SW 1/4, W 1/2 SE 1/4, Lots 3, 4.

application are included in the West Cold Springs wilderness study area (WSA) UT-080-103. This WSA is under review for wilderness characteristics and possible preservation as wilderness, pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976).

The wilderness protection stipulation permits only activities that BLM determines would not impair wilderness suitability. By signing the stipulation, appellant would acknowledge that the lands are under wilderness review and that exploration or production not in conformity with section 603 may never be permitted. Any activity must be temporary and any impacts must be capable of reclamation to a substantially unnoticeable condition so as not to constrain the Secretary's decision whether to recommend the area as wilderness.

In its statement of reasons on appeal, appellant argues that imposing such restrictions in this rugged terrain would preclude oil and gas operations on the lease. BLM has so far restricted use of these lands, appellant argues, as to impose a de facto withdrawal. Appellant claims that imposition of the wilderness stipulation is arbitrary, capricious, an abuse of the Secretary's statutory authority, and contrary to the spirit and intent of FLPMA outlined in the declarations of policy at 43 U.S.C. § 1701 (1976), citing primarily Rocky Mountain Oil and Gas Association [RMOGA] v. Andrus, 500 F. Supp. 1338 (D. Wyo. 1980) (appeal filed Jan. 7, 1981).

[1] As appellant notes, FLPMA instructs the Secretary to manage the public lands in a manner that will protect environmental values while recognizing the need for domestic sources of natural resources. 43 U.S.C. § 1701(a)(8) and (12) (1976). FLPMA also specifically instructs BLM to review those areas of the public lands identified as having wilderness characteristics. 43 U.S.C. § 1782(a) (1976). In addition, FLPMA provides for management of these lands during the review "in a manner so as not to impair the suitability of such areas for preservation as wilderness," subject to continued mineral leasing and other uses "in the manner and degree in which the same was being conducted" on October 21, 1976. 43 U.S.C. § 1782(c) (1976).

The Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP) was adopted to implement section 603, 43 U.S.C. § 1782 (1976), as well as BLM's general management authority found in sections 201 and 302 of FLPMA, 43 U.S.C. § 1711, 1732 (1976) and the Wilderness Act of 1964, 16 U.S.C. § 1131 (1976). These guidelines impose the same standard wilderness protection stipulation in dispute here on all new leases issued after adoption of the IMP. "Activities may occur on these leases so long as the BLM determines that they satisfy the nonimpairment criteria" (IMP at 24). The guidelines clearly contemplate oil and gas exploration and development activity as determined on a case-by-case basis.

This stipulation permits continued oil and gas leasing activity on the public lands while the Department carries out the congressional mandate to

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fn. 1 (continued)

The wilderness stipulation was imposed upon the following lands: Sec. 22, E 1/2, N 1/2 NW 1/4, SE 1/4 NW 1/4; sec. 23, lots 3, 4, W 1/2 E 1/2, W 1/2.

study and protect potential wilderness areas. See Reserve Oil, Inc., 42 IBLA 190 (1979). BLM may act to prevent permanent impairment of potential wilderness values of such lands while permitting activities with only temporary impacts to proceed. Utah v. Andrus, 486 F. Supp. 995, 1007 (D. Utah 1979). Given BLM's dual responsibilities, this wilderness protection stipulation is reasonable. John R. Anderson, 57 IBLA 149 (1981); Diane Katz, 47 IBLA 177 (1980). 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed. Appellant will be allowed 20 days from receipt of this decision to file the required stipulation with BLM, otherwise the subject lease offer will be rejected as to those lands for which the wilderness stipulation is required.

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James L. Burski  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

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2/ To the extent that the decision of the district court in RMOGA could be read as prohibiting the imposition of this stipulation, we note that the Department has pursued an appeal to the Tenth Circuit Court of Appeals and, by Instruction Memorandum of Mar. 12, 1981 (I.M. 81-325) the Acting Director, BLM, instructed that all post-FLPMA leases would be regulated under the nonimpairment standard even in the absence of an express wilderness protection stipulation.

